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VIA ELECTRONIC MAIL AND HAND DELIVERY

May 30, 2014

Mr. Richard Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 West Randolph Street
Suite 7-801
Chicago, Illinois 60601

Re: Comments & Opposition to Proposed Rule 100.440

Dear Mr. Haymaker:

I am writing on behalf of our client, Cooper's Hawk Productions, LLC ("Coopers Hawk"), to formally object to the adoption of proposed Rule 100.440, "Retailer Specific/Private Labeling" (the "Rule").

As you know, Cooper's Hawk possesses both winemaker and winemaker retail licenses issued by the Commission at each of its six winemaker/restaurant premises located throughout the metro Chicago area. Cooper's Hawk employs no less than 900 persons at its combined operations, which, besides operating as full service restaurants, also manufacture its own private label wines at each of the locations. Each of these wines contain the name "Coopers Hawk" as part of the label, which are sold only at its licensed winemaker retail locations for both on and off premise consumption by its patrons.

As you know, the production process for the wines begins at one designated central winemaker/winemaker retail licensed location and the process continues from there, between each of its other licensed locations until the almost completed wine is shipped back to the central location for production and finishing via the bottling and labeling of the wines ("finished

wines"). The finished wines were previously and in our opinion (as well as the TTB's opinion) lawfully transferred back to the other licensed locations wherein part of the production process took via in-bond transfers, without necessity of the use of a wholesale distributor. However, at your insistence and despite what we believe is your incorrect interpretation that these in-bond transfers of the finished wines are not permitted under Illinois law, Cooper's Hawk has voluntarily agreed effective June 1, 2014, though without waiver of its right under both federal and state law to subsequently continue to engage in these in-bond transfers, that it will cease doing so and sell the finished wines from the central production facility to a wholesale distributor. This distributor shall in turn resell the Cooper's Hawk labeled wines only to the Cooper's Hawk retail locations wherein they were in part produced. This voluntary change in methodology regarding the sales to a wholesaler rather than the use of in-bond transfers may have to cease in the event the Rule as drafted were to be adopted.

Our objections to the proposed Rule are based upon the premise that no practical problem exists within the industry which needs to be addressed by the Commission with regard to private label products let alone the current draft of the proposed Rule. It would also destroy the business of Cooper's Hawk. Products bearing private labels have been sold in Illinois and throughout the United States for at least 38 years, since I first became involved in their use both in Illinois and on a national basis. Further, it is my view that there simply is no statutory authority for the proposed Rule.

Initially, it should be pointed out that the description in the proposed Rule of "Private Labeling" is incorrect. The traditional industry-wide definition of a "private label" is a brand label with a name owned or trademarked by a licensed retailer. Private labels do not have to contain the retailer's name. The wines produced by Cooper's Hawk are sold under the "Cooper's Hawk" brand label. Private label products could also consist of those of others which do not contain the name of the retailer as part of the brand name. A hotel or restaurant may own a name which does not contain the hotel's or restaurant's name as part of the actual brand name and is used as a private label. Such a label or brand name may be fanciful like "Haymaker Chardonnay" owned by a hotel or restaurant named "Rick's Hotel." You will have licensed a winemaker to produce the finished wine with a label bearing the name "Haymaker Chardonnay" to then be sold a wholesale distributor, to in turn to be sold exclusively to and by "Rick's Hotel."

In the instance of sales by the manufacturer, the wholesale distributor may be directed by the retailer owning the trademark that the private label product may only be sold to that retailer, and this is a true "private label." If the retailer desires that product to be sold by the wholesaler in general distribution, available for purchase to all retailers, this is not an actual private label sold exclusively by a single retailer or chain of retailers. However, for purposes of these comments we will include the latter in what you have termed "private labeling."

With regard to general distribution for sale to all retailers, or sales exclusively to the retailer which owns the name, sales are conducted via the three-tier system. An alcoholic beverage with a private label brand name for general distribution is one where the manufacturer has entered into a limited license agreement for use of the name in the product it manufactures and for which it pays a royalty or license fee to the retailer for the use of the name. This fee can be based upon per case production or sale to distributors. (Note that this is not the case where the products are manufactured for and sold to a single retailer.) In the instance of a true private label, the manufacturer does not receive a royalty or license fee. Rather, the manufacturer only receives the purchase price paid by the wholesaler for the finished products, which are then sold to the retailer as the retailer's private labels brands. Since there are no sales efforts with minimal cost involved on the part of the wholesale distributor in making the sales of true private labels, the margins or markups on the part of the wholesaler are less than for products in general distribution and for which it must engage in marketing and promotion efforts.

With the above description of private labeling in mind, we urge the Commission to reject the proposed Rule in its entirety for each of the following reasons:

1. Private Labels Are Treated Without Any Distinction Under Federal Law. Federal alcohol laws and regulations, through advisories and bulletins, although specifically recognizing the use of private labels, do not explicitly carve out or create any special requirements, or restrict in any way, their use. As stated above, these products have been manufactured and sold legally in Illinois and throughout the United States for at least 38 years if not since the repeal of prohibition. The proposed Rule would in fact be contrary to that permitted by Federal law. By way of example: the proposed Rule would require the exact same product to be sold under two different labels, which is wholly impractical and beyond the authority of the Commission to impose for the reasons set forth hereinafter.

2. No Underlying Statutory Basis for Adoption. There is no underlying statutory basis for adoption of the proposed Rule which purportedly finds its genesis in 235 ILCS 5/6-17.1. This section of the Liquor Control Act is intended to require a distributor to provide account coverage as to its portfolio of brands to all retailers, large and small, located anywhere within its geographical areas of coverage which are designated by its suppliers. Because of these designated areas, which in the instance of wine and spirits are often statewide and in the instance of beer often consist of multiple counties, it is intended to generally require distributors to provide account coverage to every retailer within its designated areas and not to allow distributors to concentrate on just large accounts or work solely in urban areas (known as "cherry picking"). This section is not intended to require private labels to be offered for sale to every retailer. If this were the case, then private labels as properly defined above would have been long prohibited in Illinois. As to Cooper's Hawk and the very same wines which bear its name, which it produces in its restaurants and which it offers for sale in its restaurants to consumers as part of its overall

concept, those wines would now have to be available for sale by its wholesale distributor to every other retailer, destroying its successful concept of private label exclusivity as to the very wines it produces. It would also, as dealt with below, be required to produce a second version of every wine it produces to be sold under non "Cooper's Hawk" labels, which also for the reasons stated below is utter nonsense.

3. Requirement of Production of Two Versions of Same Product Creates an Impermissible Burden. The requirement contained in subsection "C" of the proposed Rule that a second version of the private label brand be produced and sold under a generic label in general distribution is wholly lacking in authority for the Commission to impose. If the Commission were to adopt this requirement, it would be engaging in impermissible legislating. Even if adopted by the Legislature, without getting into the area of "commercial free speech," it would be lacking in any valid state interest. As part of the Commission's consideration of adopting the proposed Rule, perhaps you and/or the Commission should first consider the answers to the following questions:

    a. Will the Commission require the same two products be sold at the same prices by the manufacturer to the wholesaler, by the wholesaler to the retailer, and by the retailer to the consumer?
    b. Why would or should any company manufacture two products with the likelihood that this will overall generate a loss or little profitability? There is no reasonable assurance that the production of one let alone two products would be profitable. Yet, if the private label version is successful, why should that success be potentially diluted if not vanish by having to produce a second generic version?
    c. What if no wholesaler or retailer actually purchases the generic product? Who bears the loss for the generic version?
    d. How much of the generic product would have to be produced in order to be compliant with the proposed Rule?
    e. Assuming a manufacturer desires to make only the private label version, the retailer would then have to contract with the manufacturer or find a manufacturer to make the generic version. What if no manufacturer will produce one or both of the necessary versions? The retailer will likely be required to absorb the costs for the generic version in order to obtain its private label version. Again, this is economically unfeasible.
    f. What if the quantity of underlying finished product is not available or of a very limited quantity (such as a lack of a particular vintage or fermented grapes on hand), or there is not enough space for the fermentation process to take place for two of the same products? Are you even aware of, ascertained, or taken into consideration the costs in labor and down time involved just in the switching of a bottling line for the labeling of the 60-plus different types of wine Cooper's Hawk

currently produces, which would be doubled for purposes of producing an unneeded generic labeled version of each wine?

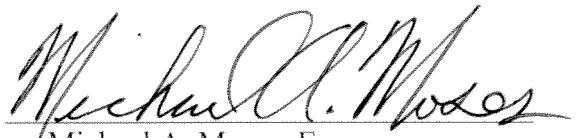
g. How does the production and sale of wine in kegs or barrels fit into this generic requirement?
h. Does not this two product requirement from a practical standpoint, in fact, result in the prohibition of private labels, rather than bring clarity to the process?

As noted at the outset, Cooper's Hawk employs no less than 900 persons. In addition, it had gross retail sales in excess of six million dollars during the calendar year 2013, upon which it paid untold (you do the math) local and Illinois sales taxes, Illinois excise taxes, Illinois corporate taxes, as well as city and county property taxes, amongst others. What about the taxes and contributions to the economy by those 900 plus employees? The success of Cooper's Hawk has been built in pertinent part upon it offering Cooper's Hawk wines, which it produces at and which are available only in its Cooper's Hawk restaurants. The proposed Rule would in our estimation harm what is a successful business not only for Cooper's Hawk but also for the persons it employs, the state of Illinois, and each of the communities wherein it is located.

If you have any questions regarding any of my comments, or would like to provide the answers to the above questions, or wish to discuss anything at all involving this proposed Rule, please contact me at your convenience. Also, if not an inconvenience, I would like you to send me copies of all comments you receive as to this proposed Rule.

Sincerely,

SIEGEL & MOSES, P.C.

By: 
(Michael A. Moses, Esq.

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